

Jeffery Harris  
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*Petitioner-Plaintiff in Pro Per*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCHISE**

**JEFFERY HARRIS,**

Petitioner-Plaintiff,

vs.

**THE CITY OF BISBEE, ARIZONA;  
MAYOR, DAVID M. SMITH; and  
MEMBERS OF COUNCIL, ANNA  
CLINE, JONI GIACOMINO, JOAN  
HANSEN, BILL HIGGINS, LESLIE  
JOHNS, and GABE LINDSTROM;**

Respondents-Defendants.

Case No.: CV 2019 00052

**REPLY IN SUPPORT OF MOTION TO  
STRIKE NOTICE OF APPEARANCE OF  
RESPONDENTS' PURPORTED LEGAL  
COUNSEL and MOTION TO STRIKE  
PURPORTED RESPONDENTS' MOTION  
TO DISMISS**

Assigned to: the Hon. Laura Cardinal

Marshall Humphrey, III, Esq., has responded to Petitioner Harris' Motion to Strike Notice of Appearance of Respondents' Purported Legal Counsel and Motion to Strike Purported Respondents' Motion to Dismiss, presenting a straw man argument in the first instance, and—absent a citation to relevant authority that might somehow support his position—misrepresenting applicable law in the second. Both of these arguments in opposition fail, and both Harris' Motions to Strike should be granted.

**I. EVEN IF MARSHALL HUMPHREY IS ON RETAINER WITH THE CITY OF  
BISBEE, HE HAS NOT BEEN LAWFULLY AUTHORIZED TO REPRESENT  
THE CITY IN THE INSTANT MATTER**

Mr. Humphrey's argument in opposition to Harris' Motion to Strike Mr. Humphrey's Notice of Appearance is a straw man that fails entirely to meet the actual argument presented by

1 Harris in his Motion to Strike. In his Motion, Harris has contended that Humphrey lacks the  
2 standing to appear in the *instant matter* precisely because he has neither been authorized to  
3 represent the City of Bisbee in the instant matter *in a manner consistent with Arizona law* nor has  
4 he filed an application with this Court for leave to intervene. In contrast, Humphrey's  
5 contention is that, because he and his firm have been retained by the City of Bisbee through a  
6 public vote of the City Council to provide (alternative) legal services, this "authorization" to  
7 provide legal services, *generally*, somehow also provides Humphrey with what he purports to be  
8 "authorization" (obtained through a public vote) to represent the City and its Council in this  
9 *specific* instance.

10 While it may be convenient for Mr. Humphrey to conflate "authorization" to provide  
11 legal services *generally* and *specific* "authorization" to represent to the City and its Council in  
12 the instant matter, conflation of this sort is inconsistent with Arizona law. As Harris argued in  
13 his Motion to Strike, A.R.S. § 38-431.03(D) explicitly requires that "A public vote shall be taken  
14 before **any** legal action binds the public body." (Emphasis added.) Therefore, pursuant to § 38-  
15 431.03(D), even an attorney retained by a public body must first obtain *specific* authorization  
16 through a public vote of that body to proceed before he binds that body in a specific suit to which  
17 that public body is a party. And, precisely because the City has failed to authorize any one to  
18 represent it in the instant matter through a public vote, neither Mr. Humphrey nor any other  
19 attorney has been authorized to represent the City of Bisbee and its Council as Respondents in  
20 the instant matter in a manner that is consistent with Arizona law. Therefore, Mr. Humphrey has  
21 no standing in this matter, and the Notice of Appearance that he filed on February 27, 2019, as  
22 well as any unauthorized pleadings or other papers filed in this matter, should be stricken.  
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1       **II.     THE QUESTION OF ADMINISTRATIVE STANDING IS NOT RIPE FOR**  
2       **ADJUDICATION BY THIS COURT**

3           Mr. Humphrey’s two-pronged response in opposition on Harris’ Motion to Strike  
4       purported Respondents’ Motion to Dismiss fails to meaningfully rebut Harris’ contention that the  
5       question of administrative standing is not ripe for adjudication by this Court. Neither of the  
6       arguments put forth by Mr. Humphrey in his Response properly addresses an issue that might  
7       somehow defeat Harris’ Motion to Strike (purported Respondents’ Motion to Dismiss).

8           Mr. Humphrey has entirely misplaced his reliance on *Karbal v. Dep’t of Revenue*<sup>1</sup> to  
9       attempt to rebut Harris’ contention that the question of administrative standing is not ripe for  
10      adjudication by this Court in the instant special action. Despite Mr. Humphrey’s assertion that  
11      *Karbal* and the instant special action are somehow analogous, these two cases can be readily  
12      distinguished. Harris brought the instant action—within the narrow confines of the Rules of  
13      Procedure for Special Actions—to resolve the single question as to whether the Respondent City  
14      has failed to perform a duty required by law as to which it had no discretion. In sharp contrast,  
15      the Court of Appeals, in *Karbal*, addressed the question as to whether Karbal had standing to  
16      bring a suit in tax court on behalf of another taxpayer. The Court of Appeals held that “Karbal  
17      lacks legal standing to bring this suit because he is not the actual taxpayer” without addressing  
18      the issue of exhaustion of administrative remedies (also raised by Karbal). *Id.* at 117, ¶ 11; at n.  
19      4. In *Karbal*, the appellant specifically raised the issue of standing in an attempt to overturn an  
20      adverse ruling by the tax court; whereas, in the instant special action, Petitioner Harris has made  
21      no attempt to overturn an administrative ruling (that the City Council failed to render) nor has he  
22      asked this Court to adjudicate the issue of administrative standing. Plainly, there is little, if  
23      anything, analogous between a *special action* brought to resolve the sole issue of whether a  
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<sup>1</sup> 215 Ariz. 114 (App. 2007)

1 public body has failed to perform a duty required by law and an *appeal* taken from the tax  
2 court's denial of a suit brought by someone who lacked standing because he was not the actual  
3 taxpayer. Precisely because the issue of administrative standing cannot be properly raised in  
4 instant special action, Harris simply seeks a ruling by this Court that would afford him the  
5 opportunity to exhaust his administrative remedies that he was denied below in utter disregard of  
6 applicable law.

7 In the second portion of his two-pronged response in opposition to Harris' Motion to  
8 Strike (purported Respondents' Motion to Dismiss), Mr. Humphrey has shifted from relying on  
9 case law that is not analogous to creatively misinterpreting applicable law. Entirely absent a  
10 citation to relevant authority that might somehow support his conclusory assertion, Mr.  
11 Humphrey has misleadingly asserted that "[a] final decision has been reached in Mr. Harris'  
12 administrative action" and that the administrative decision rendered by the Bisbee City Manager  
13 (at that time) "is final in the sense that it forecloses further action by the City with respect to Mr.  
14 Harris' claim." The convenient notion that a final decision has somehow been reached in Harris'  
15 administrative claim (or that Harris' right to an administrative appeal was somehow foreclosed)  
16 can be readily refuted, however, by merely examining the law governing protests against  
17 contracts awarded by the City of Bisbee. Nowhere in the Bisbee City Code section governing  
18 such protests, § 3.5.20, is there any provision that would somehow authorize a city manager to  
19 render a final decision in a protest brought in accordance with this section. To the contrary,  
20 Bisbee City Code § 3.5.20(D)(1) provides that the City Manager, upon rendering his decision  
21 under this section, "*shall* include a statement of the decision with supporting rationale and a  
22 notice of *the right to appeal* set forth in [City Code § 3.5.20,] Section E below." (Emphasis  
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added.) In turn, City Code § 3.5.20(E)(3) requires the City Council to hear timely an appeal taken from a City Manager's decision,<sup>2</sup> as is evidenced by its unequivocal language:

The City Council *shall* hear and consider the appeal within two (2) regular meetings. The protester and the City Manager *shall* be given a reasonable opportunity to be heard in the matter.

(Emphasis added.) Moreover, the following language of City Code § 3.5.20(E)(5), in and of itself, thoroughly defeats Mr. Humphrey's spurious contention that a City Manager allegedly has the authority to render an administrative decision that is somehow final:

The decision of the City Council is the final administrative action.

Therefore, in that Mr. Humphrey's Response fails to meaningfully rebut Harris' argument that the Motion to Dismiss is devoid of argument material to the instant Special Action, the purported Respondents' Motion to Dismiss should be stricken.

DATED this 29<sup>th</sup> day of April, 2019.

/s/ Jeffery Harris  
Jeffery Harris

Original of the foregoing transmitted electronically on this  
29<sup>th</sup> day of April, 2019 to:

Clerk of the Court  
Cochise County Superior Court  
100 Quality Hill  
Bisbee, Arizona 85603

By mutual agreement, copy of the foregoing was electronically transmitted on this same day to:

Marshall Humphrey, III, Esq.  
[mhumphrey@humphreyandpetersen.com](mailto:mhumphrey@humphreyandpetersen.com)

<sup>2</sup> Remarkable, perhaps, City Code § 3.5.20(D)(4) states that: “If the City Manager fails to issue a decision within the time limits set forth in subsection (1) or (3), the protester may proceed as if the City Manager had issued an adverse decision.”